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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,055	06/14/2007	Michell C. Tschantz	856-017-1-1	4349
4955 7590 07/27/2009 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468				
EXAMINER				
FIDEL, DAVID				
ART UNIT		PAPER NUMBER		
3728				
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07/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,055

Applicant(s)

TSCHANTZ, MICHELL C.

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/302)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date ____

Specification

1. The disclosure is objected to because of the following informalities: Page 10 of the disclosure has parts missing.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 6 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms “the distal ends”, “the legs”, claim 4; “the seams, claim 6 and “the sides, top and bottom” of claim 12 have no antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis et al (US 5,005,702). In figure 4, an air cushion is defined comprising an inflatable tube 50 defined by

an inside seam where panels 78, 80 are attached. Two facing product support panels 78, 80 extend from the inside seam of the inflatable tube. The product support panels providing a product placement area for receiving and holding a product suspended on the product support panels and substantially surrounded by the inflatable tube.

As to claim 4, a U-shaped configuration is defined by one transverse side and two longitudinal sides of the tube 50.

As to claims 8 and 9, a plurality of stacking legs 56, 58 are provided

6. Claims 1-4, 8, 12, 14 and 15 rejected under 35 U.S.C. 102(b) as being anticipated by Igarashi (US US 2007/0012591). In figure 1, an air cushion is defined comprising an inflatable tube 41 defined by an inside seam 43. Two facing product support panels, defined by the bottom of tube 41 shown in figure 16, extend from the inside seam of the inflatable tube. The product support panels providing a product placement area for receiving and holding a product suspended on the product support panels and substantially surrounded by the inflatable tube.

As to claim 4, a U-shaped configuration is defined by one transverse sides as shown in figure 16.

As to claims 8, pluralities of stacking legs are provided as defined by the two top transverse sections shown in figure 16.

As to claims 12 and 14 and 15, a box is contemplated by Igarashi, paragraph [0088].

7. Claims 1-3, 5-7, 12, 14, 15 and 16 rejected under 35 U.S.C. 102(b) as being anticipated by Barmore et al (US 6,520, 332). An air cushion is defined comprising an inflatable tube 442, see figure 12, defined by an inside seam. Two facing product support panels, defined by the bottom of tube 442 shown in figure, extend from the inside seam of the inflatable tube. The product support panels providing a product placement area for receiving and holding a product suspended on the product support panels and substantially surrounded by the inflatable tube.

As to claims 5-7, the support panels is slit at 467, also see figure 14. Multiple product placement areas are defined in figure 12 that are defined by seams.

As to claims 12 and 14-15, a box is contemplated in figure 5.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9-11, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igarashi (US US 2007/0012591). It would have been an obvious matter of design choice to construct the legs of a height as claimed, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior

art device, *Gardner v. TED Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 11, Official Notice is taken that it is old and well known to provide conductive layers in the container art to provide conductive layers in order to shield products sensitive to static electricity.

As to claims 13 and 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to sheets having different coefficients of friction in order hold the cushion in place, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, see § M.P.E.P. 2144.06.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. The examiner can normally be reached on Monday - Friday 8:30 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David T. Fidei/

Primary Examiner, Art Unit 3728